

Towards Statements and Restatements of EU Administrative Law

Presentation for the
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Towards an EU administrative procedure law ?

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Towards Statements and Restatements of EU Administrative Law

- Restatements: The US experience and example
- The European Union's need for (consolidating) Restatements and (innovative) Statements in the field of administrative law
- Scope of statements and restatements
- The process of restating and stating the law
- Statements and restatements as an innovative form of (comparative) legal scholarship
- Functions and possible use of statements and restatements

Restatements: The US experience and example

- *“In the United States, the notion of a Restatement of the Law has traditionally signified a consolidation of the principles of [judge made] law governing a given field with a view to bringing a measurably greater degree of clarity, consistency and simplicity to the law than would otherwise exist – without, however, any pretense that such a consolidation amounts in itself to positive law”*

George Bermann, *A Restatement of European Administrative Law: Problems and Prospects* (2009), available on <http://www.reneual.eu/>

- NB: the American experience has been developed mainly in fields of private law

The European Union's need for (consolidating) Restatements and (innovative) Statements

- Fragmentation of and lacunae in existing EU law of administrative procedure (*cf. Prof. J-P Schneider*)
- *“Four main purposes exist for a codification of EU administrative procedure: clarification of, and easier access to law; increasing the coherence of principles and procedures; setting up default procedures to fill gaps in existing law and establishing the functions of administrative procedure”.*

Jacques Ziller, *Is a law of administrative procedure for the Union institutions necessary? Introductory remarks and prospects* (2010) Briefing Note for the European Parliament, Legal Affairs Committee, available on <http://www.reneual.eu/>

Scope of Statements and Restatements

- Institutional scope: not national administrative law as such, but direct and shared implementation of EU law and policies
 - EU institutions, bodies, offices and agencies in direct administration
 - Allowing optimal degree of compatibility with Member States' administrative procedure law in shared implementation (without prejudice of problems of legal bases for codification)
- Policy scope: no ex-ante exclusion of any sector, but taking into account possible need for sector specific rules
- Material scope: unilateral/single-case decisions, rule-making, contracts, information management

The process of restating and stating the law

- Collecting and structuring materials: reconstructing the status quo
- Evaluation of the status quo through case studies and comparative analysis
 - Diagnosis
 - Discussion of the need/possibility/content of remedies
- Drafting, explaining and justifying statements and restatements
 - Model rules
 - Comments
 - Notes
- Involvement of practitioners in the process

Statements and restatements as an innovative form of (comparative) legal scholarship

- ReNEUAL as part of a global renewal of interest and involvement comparative administrative law
- Promoting a high degree of integrated and collaborative research between scholars specialised in EU member States' administrative law, in EU administrative law, with the involvement of scholars from other countries
- Acknowledging the need for interaction with practitioners from EU and national institutions and with other interested parties
- Acknowledging the unique nature of EU law as a multilingual law through a specific language policy

Functions and possible use of statements and restatements

- A contribution to training and education in administrative law and public management
- A set of e rules and their discussions available for
 - Legislators and regulators at EU and national level
 - Courts
 - Ombudsmen
 - Practitioners
 - Scholarship
- **Last but not least: Statements and Restatements as a contribution to the preparatory work of a possible EU codification of administrative procedure law**